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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,868	07/23/2003	Martha F. Rowland	030263	8007
26285	7590	10/19/2004	EXAMINER	
KIRKPATRICK & LOCKHART LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222			LEV, BRUCE ALLEN	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/625,868	ROWLAND ET AL. <i>SL</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Bruce A. Lev	3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 September 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

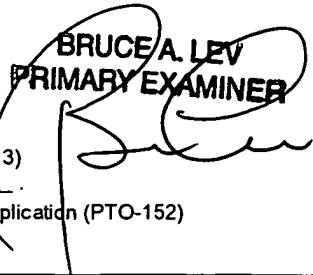
a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.



BRUCE A. LEV  
PRIMARY EXAMINER

## DETAILED ACTION

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "***is disclosed***", in line 1.

### ***Claim Rejections - 35 USC § 103***

***Claims 2-6, 12, 13, 16-18, 20, and 21 are rejected*** under 35 U.S.C. 103(a) as being unpatentable over ***Schmitt et al 5,673,768 in view of Nelson et al 5,692,581.***

As concerns claims 2-6, 12, 13, 16-18, and 20, ***Schmitt et al set forth*** a ladder comprising a first side rail; a second side rail; a rung; and a means for covering the rung including a sleeve 6; a cylindrical sleeve comprising first and second ends; a first inner surface defining a circular opening; a second concentric outer surface; the sleeve formed from cell foamed rubber; a slit extending from the first to the second end; a water-proof fabric layer; and a fastener (inclusive of member 13). ***What Schmitt et al do not set forth*** is the sleeve covering a "substantial portion" of the rung between the first and second side rails. However, ***Nelson et al teach*** forming a ladder rung sleeve extending and covering a "substantial portion" of its rung between its first and second side rails. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeve of Schmitt et al by forming the sleeve as extending and covering a "substantial portion" of its rung between its first and second side rails, as taught by Nelson et al, in order to protect a substantial portion of the surface of the ladder rung.

***Claims 7, 9-11, 14, and 15 are rejected*** under 35 U.S.C. 103(a) as being unpatentable over ***Schmitt et al in view of Nelson et al further in view of Feigenbaum et al 5,437,071.***

As concerns claims 7 and 9-11, ***Schmitt et al in view of Nelson et al set forth*** the ladder, as advanced above, except for the sleeve being formed from cell foam rubber. However, ***Feigenbaum et al teach*** forming a sleeve from cell foam rubber material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeve of Schmitt et al in view of Nelson et al by forming it from cell foam rubber material, as taught by Feigenbaum et al, in order to increase the resiliency of the sleeve and increase the comfort to a user.

As concerns claims 14 and 15, ***Schmitt et al in view of Nelson et al set forth*** the sleeve, as advanced above, except for the fabric water-proof layer. However, ***Feigenbaum et al teach*** the use of a fabric water-proof layer upon a sleeve. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeve of Schmitt et al in view of Nelson et al by incorporating a fabric water-proof layer, as taught by Feigenbaum et al, in order to increase the weather resistance capability of the sleeve.

***Claims 8 and 19 are rejected*** under 35 U.S.C. 103(a) as being unpatentable over ***Schmitt et al in view of Nelson et al further in view of the German Patent 4,125,780 of Berg.***

**Schmitt et al in view of Nelson et al set forth** the ladder and sleeve, as advanced above, except for the first surface including a plurality of grooves. However, **Berg teaches** the use of grooves 14 upon a first surface of a sleeve. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeve of Schmitt et al in view of Nelson et al by incorporating a plurality of grooves on the first surface, as taught by Berg, in order to increase the coefficient of friction of the sleeve and thereby the safety of the user stepping thereon.

### ***Response to Amendment***

Applicant's remarks filed September 15, 2004 have been fully considered but are deemed moot due to the new grounds of rejection as advanced above.

### ***Conclusion***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Applicant's amendment, including "a substantial portion...between the first and second side rails", in claims 17 and 20, necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

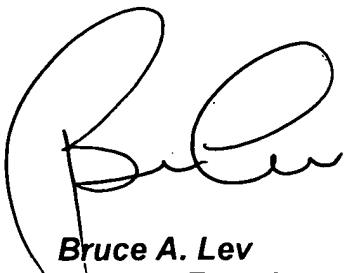
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

10/08/2004



Bruce A. Lev  
Primary Examiner  
Group 3600